

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Hon. Robert E. Blackburn**

**Criminal Case No. 13-cr-00492-REB-1**

**UNITED STATES OF AMERICA**

**Plaintiff(s),**

**v.**

**1. HECTOR DIAZ**

**a/k/a Hector Diaz-Martinez  
a/k/a Hector Josue Diaz-Martinez  
a/k/a Hector J. Diaz-Martinez,  
Defendant.**

---

**PLEA AGREEMENT**

---

The United States of America, by and through Bradley W. Giles and M.J. Menendez, Assistant United States Attorneys for the District of Colorado, and the Defendant, Hector Diaz, personally and by counsel, Mr. Abraham V. Hutt, Esq., submit the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure and District Court of Colorado Local Rule 11.1.

It is the intention of the parties to resolve all pending federal criminal issues, excluding any tax issues (none are presently known to the parties), between the Defendant and the Government through the resolution of this case. Discussions in relation to this plea agreement were and are entered into pursuant to Fed. R. Crim. P. 11, Fed. R. Evid. 410, and U.S.S.G. § 1B1.8. The parties understand and agree that in the event the agreement represented herein is not accepted by the Court, is not entered into by the Defendant, or the Defendant fails to meet his obligations pursuant to this

plea agreement, the Government will proceed with the prosecution of the Defendant according to law, which may include obtaining superseding indictments, filing additional charges, and pursuing Title 21 U.S.C. § 851 allegations, if applicable. *See Ricketts v. Adamson*, 483 U.S. 1, 9-12 (1987) (agreement void and government permitted to reinstate original charges when Defendant failed to completely fulfill his obligations pursuant to the plea agreement).

### **I. AGREEMENT**

The Defendant agrees to plead guilty to Count Two of the Superseding Criminal Indictment, charging a violation of 18 U.S.C. § 1546, Visa Fraud Committed in Facilitation of a Drug Trafficking Crime. The Defendant agrees to waive his right to indictment by a Federal Grand Jury and plead guilty to Count One of a separately-filed Criminal Information charging violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(D) and 846, Conspiracy to Possess With Intent to Distribute Less Than Fifty Kilograms of Marijuana.

Assuming the plea enters and the case against Mr. Diaz results in sentencing hearing resulting from disposition, pursuant to Fed. R. Crim. P. 11(c)(1)(A), the government will bring no additional charge or charges against the Defendant arising out of the investigation within the District of Colorado which culminated in this Plea Memorandum. Again, assuming the plea enters pursuant to the plea disposition entered by the parties, the remaining charges against the Defendant will be dismissed at the time of sentencing.

The defendant, Hector Diaz agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 21 U.S.C. § 853, whether in the possession or control of the United States

or in the possession or control of the defendant or defendant's nominees, or elsewhere.

The asset to be forfeited specifically include, but are not limited to:

a. \$449,980.00 in United States Currency seized on October 31, 2013.

In addition, the defendant agrees and consents to the forfeiture of all assets seized pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have.

The defendant admits and agrees that the conduct described in the Factual Basis provides a sufficient factual and statutory basis to establish that the requisite nexus exists between the specific property subject to forfeiture and the offense[s] to which defendant is pleading guilty.

The parties agree that restitution is not an issue in this case.

## **II. ELEMENTS OF THE OFFENSE(S)**

The parties agree that the elements of the offense to which this plea is being tendered are as follows:

### **Count 2: Visa Fraud Committed in Facilitation of Drug Trafficking, in violation of 18 U.S.C. § 1546**

- 1) First, the Defendant knowingly made or presented a false statement under oath or penalty of perjury;
- 2) The statement was with respect to a material fact in an application, affidavit or other document required by the immigration laws or regulations prescribed thereunder; and

- 3) The act was committed to facilitate the commission of a felony drug trafficking crime, punishable under the Controlled Substances Act (21 U.S.C. §801 *et. seq.*).

(18 U.S.C. §1546; 18 U.S.C. §929(a); also see generally, *United States v. Polar*, 369 F.3d 1248, 1252 (11th Cir. 2004).)

**INFORMATION Count 1: Conspiracy to Distribute Marijuana (Less than 50 kilograms), in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(D) and 846:**

- 1) First, two or more persons agreed to violate the federal drug laws;
- 2) Second, the Defendant knew the essential objective of the conspiracy;
- 3) Third, the Defendant knowingly and voluntarily involved himself in the conspiracy;
- 4) There was interdependence among the members of the conspiracy; and
- 5) The overall scope of the conspiracy involved less than 50 kilograms of marijuana.

(Tenth Cir. Manual of Model Jury Instr., Criminal 2.87 (2011 ed.)(modified)).

**III. STATUTORY PENALTIES**

The maximum statutory penalties for Count Two of the Superseding Criminal Indictment, alleging Visa Fraud to Facilitate Drug Trafficking, in violation of 18 U.S.C. § 1546, are: a term of imprisonment of not more than 20 years, a fine not to exceed \$250,000.00, and a term of supervised release of not more than 3 years. There is also a \$100.00 mandatory special assessment fee.

The maximum statutory penalties for Count One of the Criminal Information, alleging Conspiracy to Distribute Less Than 50 Kilograms of Marijuana, in violation of 21

U.S.C. § 841(a)(1), (b)(1)(D) and 846 are: a term of imprisonment of not more than 5 years, a fine not to exceed \$250,000.00 and a term of supervised release of at least two years and up to life. There is also a \$100.00 mandatory special assessment fee.

If probation or supervised release is imposed, a violation of any condition of probation or supervised release may result in a separate prison sentence and additional supervision.

#### **IV. COLLATERAL CONSEQUENCES**

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury.

The Defendant further understands and acknowledges that if he is not a United States citizen, then it is highly probable that he will be permanently removed (deported) from the United States as a consequence of pleading guilty under the terms of this Plea Agreement. The Defendant has also been advised that if he is not a citizen and if his conviction is for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the United States and will not be allowed to return to the United States at any time in the future. The Defendant desires to plead guilty regardless of any immigration consequences that may result from his guilty plea, even if the consequence is automatic removal from the United States with no possibility of returning. The Defendant acknowledges that he has specifically discussed these removal/deportation consequences with his attorney.

#### **V. STIPULATION OF FACTS**

The parties agree that there is a factual basis for the guilty pleas that the Defendant will tender pursuant to this plea agreement. That basis is set forth below.

Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense[s] of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. §3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and which are relevant to the Court's guideline computations, or to the Court's overall sentencing decision.

The parties stipulate that the time period in which the relevant conduct relating to the conspiracy began is during the early months of 2012. Mr. Diaz met Gerardo Uribe, Sr., also known as Gerardo Uribe Tuiran (herein after Mr. Uribe, Sr.), through a mutual friend in Baranquilla, Colombia in 2011. Mr. Uribe, Sr. held himself out as a very successful businessman who had the financial wherewithal to invest in Mr. Diaz's steel company in Columbia named Panatubos. Alternatively, Mr. Uribe, Sr. suggested Mr. Diaz associate with him in a joint venture in the United States where his sons owned "thriving real estate and 'legal' medical marijuana businesses."

Mr. Diaz saw an opportunity to get some independence from his brothers by going into business with Mr. Uribe, Sr. Consequently, Mr. Diaz made an offer to Mr. Uribe, Sr. to have him invest in Mr. Diaz's steel products business in Baranquilla; Panatubos, and expand manufacturing to include pipes, dry wall framing and other items already manufactured by Mr. Diaz's brothers' company Centro Aceros del Caribe.

The proposal was conditioned on Panatubos only selling its products in the interior of Colombia in order to avoid competing with Mr. Diaz's brothers, who sell primarily on the coast. Mr. Uribe, Sr. expressed interest in the investment and had his son, Gerardo Uribe Cristancho (hereinafter Mr. Uribe, Jr.) travel to Barranquilla to meet Mr. Diaz. Sometime in December of 2012, following that meeting, Mr. Diaz met with his brothers, who quickly shot the idea down, because it was not their practice to do business with outsiders.

Mr. Uribe, Sr. then suggested that Mr. Diaz go into business with him and his sons in Colorado. Initially, Mr. Uribe, Sr. solicited Mr. Diaz to oversee the building of warehouses and greenhouses in Pueblo, Colorado, where the Uribes planned on cultivating marijuana and leasing out additional space to other growers. Mr. Diaz and the Uribes discussed sharing the costs of purchasing the property. Mr. Uribe, Sr. told Mr. Diaz that after the buildings were constructed, Mr. Diaz and Mr. Uribe, Sr. would manage their utility consumption and mechanical operations for a fee, while Mr. Uribe, Jr. would manage the grow operations and the tenant leases. Mr. Diaz was to receive \$20,000.00 for each warehouse / greenhouse built, and he was then supposed to be paid \$2,000.00 per month, per greenhouse, for their utility / mechanical management duties.

Mr. Diaz entered the United States on February 6, 2013 and traveled to Denver, Colorado for the first time. Mr. Diaz stayed at the residence of Gerardo Uribe, Jr. located at 52 Sedgwick Drive Englewood, CO. Mr. Diaz listed the address where he would be located while in the United States as 2949 W. Alameda Denver, Colorado. This address is the business location of VIP Wellness Center, a marijuana dispensary

operated by Gerardo Uribe, Jr. During the February 6, 2013 visit, brothers Luis Uribe and Gerardo Uribe, in the company of resident Carlos Solano-Bocanegro, showed off "their" residence located at 52 Sedgwick Drive and they claimed ownership of that residence, which was not true. The Uribes also blatantly exhibited their extensive firearm collection, and they encouraged Mr. Diaz to be photographed holding assault rifles while wearing a hat bearing the letters, "DEA". Luis Uribe Cristancho, Gerardo Uribe Cristancho, and Carlos Solano-Bocanegro made a point of showing Mr. Diaz the large amount of money they kept in the residence which was made from their marijuana distribution operations.

Mr. Gerardo Uribe, Jr., his brother Luis Uribe Cristancho, and Carlos Solano-Bocanegro, also took Mr. Diaz on a tour of their dispensaries and grow operations in Denver, and they transported him to Pueblo so he could view the expected placement of the new grow operations. As a result of this visit, Mr. Diaz returned to Colombia infatuated with the idea of taking advantage of the business claimed by the Uribes to be lucrative and financially beneficial. Mr. Diaz had learned of a business visa program available to persons who qualified to expand their businesses to the United States. Mr. Diaz was eager to unite his family in the United States for the purposes of education, quality of living, and safety. As a result of this visit, Mr. Diaz returned to Colombia with resolve to return to the United States and enter into a business venture with the Uribes.

Mr. Diaz again entered the United States on March 10, 2013 and visited the Uribes in Denver, Colorado. On his visa, Hector Diaz again listed the address where he would be located while in the United States as 2949 W. Alameda Denver, Colorado. This address is the business location for VIP Wellness Center, a marijuana dispensary



operated by the Uribe drug trafficking organization. Mr. Diaz was accompanied on this trip by his wife, who was skeptical about the legality of the marijuana business, and skeptical about Mr. Diaz entering into partnerships with the Uribes. The Uribes took Mr. and Mrs. Diaz to dispensaries, greenhouses and hydroponic grows. They told the Diaz's about retail operations authorized by the State of Colorado that would be rolling out in the coming months. Mr. Diaz understood the marijuana tour to have two purposes: 1) to convince the Diaz's of the legality of the marijuana business, and 2) to educate Mr. Diaz on the kinds of facilities that would need to be built and operated. Mr. Diaz and his wife were identified through photographs visiting a marijuana cultivation operated by the Uribe DTO located at 755 Jason Street Denver, Colorado, on March 11, 2013. This marijuana grow produced marijuana for the VIP Wellness Center. Mr. Diaz was also photographed entering a marijuana grow operated by the Uribe DTO located at 4242 Elizabeth Street Denver, Colorado, which fed VIP Wellness Center and the Golden Goat dispensaries, which were all operated by the Uribe- Cristancho DTO. The Diaz's also traveled to Pueblo, Colorado to view proposed greenhouse sites. On March 13, 2013 multiple photographs were taken using Mr. Diaz's's iPhone of 3338 61<sup>st</sup> Lane Boone, Colorado; a small town located near Pueblo, Colorado. This property was purchased by the Uribe DTO as a marijuana cultivation location.

In March of 2013, Mr. Diaz came to the United States accompanied by an attorney. Additionally, he hired an immigration attorney in the United States who advised him on the legal requirements of obtaining a business visa, including submission of a formal business plan that demonstrated sufficient capitalization and relationship with an existing business in Colombia. At Mr. Diaz's request, his attorney

asked the Uribes to assist him in preparing a formal business plan to accompany the creation of Colorado West Metals. The Uribes promised they would oblige on many occasions, but they never did.

On April 11, 2013, Mr. Diaz electronically submitted a visa application to the US Department of State in order to obtain a new B1/B2 non-immigrant visa. On May 16, 2013, Mr. Diaz was issued a new B1/B2 non-immigrant visa. On the application, Mr. Diaz checked "no", stating that he had not violated, or engaged in a conspiracy to violate, any law relating to controlled substances. Mr. Diaz also checked "no", stating that he had never been involved in, or sought to engage in, money laundering. Mr. Diaz's visa application listed is his Colombian Cedula (National Identification) number XXXX473. Mr. Diaz stated to the Government, in proffer, that he knew he was coming to Colorado to be involved in the Uribe's marijuana business. Although he knew that the cultivation and sale of marijuana was legal to some extent under Colorado state law, he also knew that it was illegal under federal law.

On May 27, 2013 Hector Diaz entered the United States and traveled to Denver, Colorado. During this visit, two photographs were taken using Mr. Diaz's iPhone of a sign and land near 3338 61<sup>st</sup> Lane Boone, Colorado, the location of a property purchased by the Uribe DTO for the cultivation of marijuana.

On June 4, 2013, Hector Diaz returned to Colombia. On June 14, 2013, Colorado West Metal, LLC was formed listing the person forming the LLC as Hector Diaz, with an address of 3773 Cherry Creek North Drive Suite 575 Denver, Colorado, which was the address of Attorney David Furtado's practice. The address provided for Colorado West Metal, LLC in the Articles of Organization filed with the Colorado

Secretary of State is 52 Sedgwick Drive Englewood, Colorado, which was the home address of Mr. Gerardo Uribe, Jr. Mr. Diaz attests that while he and his immigration lawyer were awaiting the business plan from the Uribes, David Furtado, whom he had met on only one occasion, filed the Articles of Incorporation for Colorado West Metals. Mr. Furtado also opened a bank account in the name of Colorado West Metals, LLC, with Mr. Furtado being entered as sole signer on the account.

On June 14, 2013, Gerardo Uribe, Jr. received an email from the Colorado Department of State with subject line "Document Filed for Colorado West Metal, LLC – 20131349864". The email was then forwarded to another email box for Mr. Uribe, Jr., and was ultimately forwarded to Hector Diaz. On June 14, 2013, Diaz's iPhone took a photograph of an Employer Identification Number, 32-0414525, for Colorado West Metal, LLC. The Geo Coordinates of the photograph showed the photograph was taken in an area near Barranquilla, Colombia. Mr. Diaz reports when he questioned Mr. Uribe, Jr. about the account, Mr. Uribe, Jr. told Mr. Diaz that his name would be added to the account after he arrived in Colorado.

On July 21, 2013, Hector Diaz entered the United States and traveled to Denver, Colorado using his B1 /B2 visa. On July 25, 2013, multiple photographs were taken using Diaz's iPhone of the inside and outside of the warehouse located at 5200 E. Smith Road Denver, CO.

Mr. Diaz has proffered that before he arrived in the Colorado in July of 2013, Mr. Gerardo Uribe, Jr. had told him that he was contemplating purchasing the large warehouse space at 5200 Smith Road, and he asked Mr. Diaz to travel to Colorado as soon as possible to inspect it for use in facilitating the construction of marijuana

greenhouses. Mr. Uribe, Jr. has proffered that Mr. Uribe, Jr. continued to tell Mr. Diaz that the Uribes would grow marijuana in most of the warehouse, and Mr. Diaz would construct greenhouses in another portion of the warehouse. Gerardo Uribe, Jr. further continued to pledge to Mr. Diaz that he would receive \$2,000.00 per month, per greenhouse, for their maintenance and upkeep after the greenhouses were being used to cultivate marijuana. When Mr. Diaz arrived in Colorado, Mr. Uribe, Sr. told him the Uribes had already purchased the warehouse, but when touring the warehouse with Mr. Uribe, Jr., Mr. Diaz learned that the purchase of the warehouse was still in negotiations and was not finalized. The Uribes continued to tell Mr. Diaz that he would have a portion of the warehouse to use for metals manufacturing, and that he would be involved in manufacturing of facilities for their continuing businesses.

On October 18, 2013, Attorney David Furtado created a Wells Fargo Business bank account for Colorado West Metal, LLC. On October 18, 2013 there was an email exchange between Gerardo Uribe, Jr., David Furtado, and Hector Diaz with the identification of the Wells Fargo Business bank account for Colorado West Metal, LLC. On October 29, 2013, a photograph was taken with Hector Diaz's iPhone of a BBVA bank wire receipt showing a wire request for \$424,000.00; United States dollars. On October 31, 2013, attorney David Furtado sent an email to Gerardo Uribe, Jr. and Mr. Diaz at [Panatubos@gmail.com](mailto:Panatubos@gmail.com) clarifying information about Colorado West Metal, LLC and the wire transfer. The email reads as follows:

Hector: The wire is still pending as your bank needs complete name on account; Colorado West Metals LLC.

Address is 52 SEDGWICK DRIVE, ENGLEWOOD, CO 80113, United States:

Colorado West Metals LLC has no relationship with Iran. That was a question asked.

The funds are going to be used for the purchase of a property in Colorado. Please advise if your back [sic] requires anything further.

David J. Furtado.

Mr. Diaz told the Government that he submitted the \$424,000.00 to facilitate the opening of the business and in anticipation of moving forward with the purchase of machinery, further reporting that he agreed to tell the bank the wire transfer was for the purchase of property so the wire would be effectuated after being rejected on two previous occasions. Mr. Diaz also told the Government that he continually contacted the Uribes requesting business information on the Smith Road property where he could begin setting up the physical business location for Colorado West Metal. Mr. Uribe, Jr. advised Mr. Diaz and his immigration attorney that Attorney David Furtado was handling the paperwork and it would be forwarded to Mr. Diaz "shortly". Such paperwork was never forwarded.

On November 5, 2013, a wire in the amount of \$424,000.00 United States dollars was received into the Wells Fargo Business account for Colorado West Metal, LLC from the Colombian BBVA account of Hector Diaz. The wire documents also included Mr. Diaz's Colombian Cedula (National Identification) number 5796473, which is also listed on his B1/B2 visa application from April 2013.

On November 7, 2013, a wire in the amount of \$424,000 USD was sent from the Wells Fargo Business account of Colorado West Metal, LLC to the Land Title Guaranty Company and was used as earnest money towards the purchase of 5200 E. Smith Road Denver, Colorado. That location, 5200 E. Smith Road Denver, Colorado, was

being purchased by the Uribe DTO for the cultivation of marijuana. Mr. Diaz has proffered when he arrived in November of 2013, Mr. Uribe, Jr. took Mr. Diaz to the Smith Road warehouse, told Mr. Diaz he had purchased the warehouse, and urged Mr. Diaz to purchase the portion of the warehouse needed for metals manufacturing. Mr. Diaz has proffered not knowing until after his arrest that his money was used to purchase the warehouse. Mr. Diaz agreed with the Uribes to be their partner in the upkeep of the buildings they were going to use in the marijuana business.

On November 16, 2013, Mr. Diaz entered the United States and traveled to Denver, Colorado via a B1 / B2 visa. On November 17, 2013, multiple photographs were taken with Mr. Diaz's iPhone inside VIP Wellness located at 2949 W. Alameda Avenue Denver, Colorado. Photographs included images of display cases and infused edibles. On November 20, 2013, a photograph was taken with Mr. Diaz's iPhone of an indoor marijuana grow house in Denver, Colorado. On November 21, 2013, Hector Diaz was arrested at Gerardo Uribe Jr's residence for possession of firearms.

The parties agree that due to Mr. Diaz's cooperation, acceptance of responsibility, and earned charge bargain, the appropriate amount of marijuana for which Mr. Diaz should be held accountable is approximately forty-nine kilograms.

#### **VI. TERMS – COOPERATION REQUIRED**

The Defendant agrees to provide truthful, complete and accurate information, and agrees to cooperate fully with the Government. Deliberate falsehoods or misinformation provided during his cooperation with the Government would be grounds for rescission of this plea agreement as well as possible further prosecution for perjury or false statements. This cooperation will include, but is not limited to, the following:

a. The Defendant agrees to be fully debriefed, and to attend all meetings at which his presence is requested, concerning his participation in and knowledge of all criminal activities.

b. The Defendant agrees to furnish to the Government all documents and other material that may be relevant to the investigation and that are in the Defendant's possession or control.

c. The Defendant agrees to testify fully and truthfully at any proceeding in the District of Colorado or elsewhere as requested by the Government. Mr. Diaz understands that in order to hasten his return to Colombia, he will be required to submit to a deposition, scheduled on the calendar of opposing counsel in the case, and present sworn testimony, subject to cross-examination.

d. The Defendant agrees that he will at all times give complete, truthful and accurate information and testimony and that he will fully and truthfully disclose all information with respect to the activities of himself and others concerning all matters about which the Government inquires.

e. The Defendant understands and acknowledges that if he engages in any conduct or statements that are illegal, obstructionist, in contravention of bond conditions or court orders, or otherwise stated or executed in bad faith and against the spirit of the bargain entered into with the Government between the entry of Notice of Disposition and entry of sentencing, as determined solely by the Government, the Government reserves the right to withdraw from this plea agreement, reinstate all charges, file additional charges and sentencing enhancements if warranted, and proceed to trial.

It is understood that the Government's determination of whether the Defendant has cooperated fully and provided substantial assistance, and the Government's assessment of the value, truthfulness, completeness and accuracy of the cooperation, are within the Government's sole discretion. Moreover, the Defendant shall not be entitled to withdraw his plea if the Government determines that he has not fully cooperated. The Defendant's full cooperation, including truthful testimony - if required, has not yet been completed. However, in light of Defendant's substantial assistance to date, the United States Attorney anticipates that, pursuant to U.S.S.G. § 5K1.1, it will file a timely motion for downward departure at the time of sentencing. The Court has the sole discretion to grant such a motion. The nature and extent of the Defendant's cooperation, as well as the final requested departure, will be set forth in the Government's 5K1.1 motion. The parties understand and agree that the determination of whether or not the Defendant has fully cooperated in compliance with the terms of this plea agreement is entirely within the discretion of the Government. The United States agrees to consider the totality of the circumstances, including but not limited to, the following factors, in determining whether, in the sole discretion of the United States Attorney, the Defendant has provided substantial assistance which would merit a motion by the United States for a downward departure from the applicable Guideline:

- a. The United States' evaluation of the significance and usefulness of the Defendant's assistance;
- b. The truthfulness, completeness, and reliability of any information or testimony provided by the Defendant;
- c. The nature and extent of the Defendant's assistance;



d. Any injury suffered, or any danger or risk of injury to the defendant or the Defendant's family resulting from the Defendant's assistance; and

e. The timeliness of the Defendant's assistance.

The parties recognize that any sentence requested by the Government will be a recommendation to the Court and that the Defendant's ultimate sentence will rest solely within the discretion of the sentencing Court.

The Defendant also acknowledges that he will not be able to withdraw his guilty plea in the event that the government ultimately determines that a motion for substantial assistance is inappropriate, the Court elects not to grant any downward departure pursuant to the request made by the Government, or if the Court rejects the amount of the departure requested by the Government.

#### **VII. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT**

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. §3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. The parties are in agreement as to the following guideline calculations (prior to the application of any adjustments pursuant to U.S.S.G. § 5K1.1 – if applicable):

**Count 2: Visa Fraud Committed in Facilitation of Drug Trafficking, in violation of 18 U.S.C. § 1546**

a. The Base Offense Level is 8. See U.S.S.G. §2L2.2.

b. However, because the Defendant used the visa in connection with the commission of the offense alleged as Count 1 in the Criminal Information, and the offense level in relation to that offense is greater than Level 8 (*see infra*), the guidelines for Count 1 are applied to this count of conviction. See U.S.S.G. §2L2.2(c)(1)(A).

**Count 1: Conspiracy to Distribute Marijuana (Less than 50 kilograms), in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(D) and 846:**

- a. The Base Offense Level is 18. See U.S.S.G. § 2D1.1(15).
- b. The parties agree that there are no other applicable specific offense characteristics in relation to this count.
- c. Assuming the Defendant's continued acceptance of responsibility, it is anticipated that the government will make a motion that the Defendant receive adjustments for: Acceptance of Responsibility (2 levels) pursuant to U.S.S.G. §3E1.1(a); and Timely Acceptance of Responsibility (1 level) pursuant to U.S.S.G. §3E1.1(b). In exchange for this concession, the Defendant agrees to withdraw and/or not to file any pre-trial motions and to file a timely notice of disposition with the Court.
- d. In the event that the Defendant meets the criteria set forth in U.S.S.G. §5C1.2 ("Safety Valve"), and if the Defendant complies with the requirements of U.S.S.G. §5C1.2, then the Defendant would be eligible for a two-level decrease to the Defendant's base offense level as required under U.S.S.G. §2D1.1(b)(17). The resulting offense level would be 13.

**MULTIPLE COUNT ADJUSTMENT:**

Pursuant to U.S.S.G. § 3D1.4(c), there is no multiple count adjustment applicable to this Defendant.

**COMBINED TOTAL OFFENSE LEVEL:**

As a result of the aforementioned advisory guidelines, the Defendant's combined total adjusted offense level will be **13**.

**CRIMINAL HISTORY COMPUTATION:**

The parties understand that the Defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the Defendant's prior convictions. Based on information currently available to the parties, it is estimated that the Defendant's criminal history category would be Criminal History **Category I**. Moreover, the parties do not anticipate that the career offender / criminal livelihood / armed career criminal adjustments will apply.

**ADVISORY GUIDELINE RANGE:**

A. The advisory guideline range resulting from these calculations is as follows:

**Adjusted Offense Level 13 / CHC I = 12-18 months**

However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from 12 months (Adjusted Offense Level 13, bottom of Category I) to 41 months (Adjusted Offense Level 13, top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.

B. Pursuant to guideline § 5E1.2, assuming the estimated offense levels above, the fine ranges for this offense would be as follows (plus applicable interest and penalties):

Adjusted Offense Level **13** = \$ 3,000 to \$ 30,000

C. Pursuant to Count 2: Visa Fraud, in violation of 18 U.S.C. § 1546, the court may impose a term of supervised release of not more than 3 years. Pursuant to Information Count 1: Conspiracy to Distribute Marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(D) and 846, the court may impose a term of supervised release of at least two years and up to life. The ultimate length and conditions of the term of supervision is left to the sole discretion of the Court.

D. The government will not request a restitution order as no conditions within this case implicate the provisions of U.S.S.G. § 5E1.1.

E. The parties understand that although the Court will consider the parties' estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position(s) of any party.

F. The parties are in agreement as to the advisory guideline ranges as enumerated herein. Moreover, at the completion of the Defendant's cooperation with the United States, it is anticipated that the United States may, at its discretion, file a motion for downward departure as a result of the Defendant's substantial assistance. See U.S.S.G. § 5K1.1. Moreover, the government will not request a sentence above the upper end of the advisory guidelines ranges as enumerated herein. However, there are no other sentencing agreements in this case. The Defendant may request any sentence from the Court, including a sentence of probation. The Defendant may also file any motions for departures and/or variances in support of that request. The government is free, at its own discretion, to oppose any such requests, and to request any sentence consistent with the guideline calculations as enumerated herein.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. §3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. §3553 factor. The Defendant will not be permitted to withdraw his guilty plea in the event that the Court imposes a sentence which is not in accordance with this agreement.

#### **VIII. WAIVER OF APPEAL AND POST-CONVICTION PROCEEDINGS**

The Defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Understanding this and in exchange for the concessions made by the government in this agreement, the Defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence unless it meets one of the following criteria: (1) the sentence imposed is above the maximum penalty provided in the statute(s) of conviction; (2) the Court, after determining the otherwise applicable sentencing guideline range, either departs or varies upwardly; or (3) the Court determines that the total offense level is higher than Level 13 and imposes a sentence above the sentencing guideline range calculated for that total offense level.

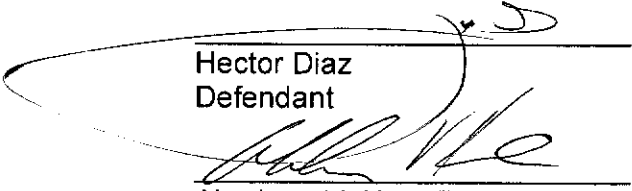
Except as provided above, the defendant also knowingly and voluntarily waives the right to appeal the manner in which the sentence is determined on grounds set forth in 18 U.S.C. § 3742. The Defendant also knowingly and voluntarily waives his right to

challenge this prosecution, conviction, or sentence and/or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255. This waiver provision, however, will not prevent the Defendant from seeking relief otherwise available if: (1) there is an explicitly retroactive change in the applicable guidelines or sentencing statute, (2) there is a claim that the Defendant was denied the effective assistance of counsel, or (3) there is a claim of prosecutorial misconduct. Additionally, if the government appeals the sentence imposed by the Court, the Defendant is released from this waiver provision.


#### **IX. ENTIRE AGREEMENT**

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the Defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: 02/13/15

  
Hector Diaz  
Defendant

Date: 2/13/15

  
Abraham V. Hutt, Esq.  
Defendant's Attorney

Date: 2/23/2015

  
M.J. Merendez  
Assistant US Attorney

Date: 2/23/2015

  
Bradley Giles  
Assistant United States Attorney